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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BRADLEY, et al.,

Plaintiffs,

v.

ANDOVER SECURITIES, et al.,

Defendants.

Case No. 96-1023-J (JFS)

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PURSUANT TO RULE 12(b)(2), (3) and (6), FED.R.CIV.P., and 15 U.S.C. §§ 77v and 78aa

Date: May 27, 1997
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1. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs allege in their Second Amended Complaint ("SAC") that each of the unrelated Defendants sold different promissory notes ("Notes") issued by Towers Financial Corporation, Inc. ("Towers") in separate transactions to each of the unrelated Plaintiffs. Plaintiffs claim that, as a result of the Defendants' conduct, Plaintiffs were induced to purchase Towers Notes and/or reinvest the principal of such investments in additional Note purchases. Plaintiffs claim that, unbeknownst to Plaintiffs, the source of the "interest" they received on their Notes was the principal paid by later Note investors. With the collapse of Towers in New York in 1993, it was revealed that the Towers' Notes were worthless. Indeed, there has been massive litigation in the United States District Court for the Southern District of New York with respect to the collapse of Towers, and the investors' claims arising therefrom.

The specific allegations in Plaintiffs' SAC[1] against Defendant Jay Biedenharn aka Joseph Augustus Biedenharn II ("Biedenharn") is limited to the following:

> Defendant JAY BIEDENHARN aka JOSEPH AUGUSTUS BIEDENHARN II, was a stock broker employed by Biedenharn Investment Group, Inc. who, in the proper manner alleged herein, recommended and sold $100,000 worth of note(s) to RALPH BROCKMAN. Defendant WILLIAM E. POWDRILL III was a stockbroker employed by Biedenharn Investment Group, Inc. who, in the improper manner alleged herein, recommended and sold $500,000.00 worth of note(s) on or about August 13, 1990

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[1] Defendant Biedenharn has not been served with the SAC. However, since the Court granted Plaintiffs' Motion to File a Second Amended Complaint, Defendant Biedenharn responds thereto.

> and $150,000.00 worth of note(s) on or about June 1, 1991 to DANNY N. LITTON. The acts and omissions of JAY BIEDENHARN aka JOSEPH AUGUSTUS BIEDENHARN II and POWDRILL were within the course and scope of their agency for Defendant Biedenharn Investment Group, Inc. and at all times relevant herein, JAY BIEDENHARN aka JOSEPH AUGUSTUS BIEDENHARN II and POWDRILL were acting under the supervision, direction and control of and with the express implied authorization of the shareholders, officers, compliance officers, directors, registered principles and other management level officials of Biedenharn Investment Group, Inc. Plaintiffs are informed and believe that Defendants JAMES MCCURRY, WILLIAM E. POWDRILL III, JAY BIEDENHARN aka JOSEPH AUGUSTUS BIEDENHARN II, are the officers, directors, compliance officers, managers, owners and/or registered principles and/or control persons and/or alter egos of Biedenharn Investment Group, Inc. and said defendants encouraged and/or authorized and/or assisted and/or participated in and ratified the wrongful conduct alleged herein and are directly and secondarily liable for the acts and omissions of Biedenharn Investment Group, Inc. and its agents, representatives, and employees as alleged herein.

SAC, p. 5, ¶ 11.

Plaintiffs' SAC is barred by the statute of limitations. Plaintiffs admit the federal causes of action are time barred and erroneously assert the claims are tolled by the pendency of an underlying class action in New York. However, the claims are not tolled by the underlying action which is awaiting certification of the class, in a case where Biedenharn was never a defendant. Therefore, Plaintiffs' federal causes of action are time barred.

Plaintiffs strategically title their state law causes of action to avoid being barred by the statute of limitations. However, it is evident by examining the SAC that the gravamen

of Plaintiffs' allegations are based in fraud and thus are time barred.

Furthermore, Plaintiffs SAC must be dismissed since Defendant Biedenharn is not subject to venue in California. The SAC alleges no California nexus of any kind with these transactions involving this Defendant. Biedenharn does not reside in California, nor has he ever transacted securities business in California. More importantly, all of the parties identified in paragraph 11, supra, are residents of Louisiana, which is where the transaction took place. Defendant never had any idea that he would be forced into California to defend these claims. Therefore, as set forth below, venue over this Defendant in the Southern District of California is improper.

2. PLAINTIFFS' CLAIMS AGAINST BIEDENHARN ARE BARRED BY THE STATUTE OF LIMITATIONS

Plaintiffs, by only arguing tolling of the statue of limitations, implicitly admit that the federal allegations against Defendant Biedenharn are barred by the statute of limitations. Even without this admission it is obvious from the face of the SAC and the Declaration of Biedenharn filed herewith that the alleged transactions transpired at the latest in September of 1992 and thus are barred by the three year statute of limitations under the 1933 Act and the 1934 Act. Thus, absent a finding that the federal causes of action are tolled, Plaintiffs' claims are time barred.

Plaintiffs contend that the pendency of the class action in Gold, et al. v. Towers Financial Corporation, Inc. et al., later consolidated into In Re Towers Financial Corporation

Noteholders Litigation, USDC, Southern District of New York, Master File No. 93 Civ. 0810 (WK), tolls the statute of limitations. Plaintiffs admit that several of the Defendants in this action were not named in the Gold case. However, Plaintiffs assert that Gold tolls the statute even as to the brokerage defendants that were not expressly named. Neither Defendant Biedenharn nor Defendant Biedenharn Investment Group ("BIG") were named in the Gold action.

Plaintiffs and their same counsel argued, and lost, this same tolling contention in the San Diego Superior Court case, Goodman, et al. v. Ashford Investments, Inc., et al., Case No. 700079, before Hon. Jeffrey T. Miller.[2] Judge Miller explained that the individual broker dealers were not named as putative members and thus Gold, supra, was not applicable to the individual Defendants. Plaintiffs implicitly admit, by only arguing tolling as to the defendant brokerage houses, that this was a correct ruling. Therefore, Plaintiffs' allegation against Biedenharn as a registered representative who allegedly sold Towers Note(s) is time barred.

Plaintiffs also contend that Biedenharn is liable for the acts and omissions of BIG. Plaintiffs do not, however, assert any facts supporting an alter ego allegation. Biedenharn is not the alter ego of BIG, but assuming only for this argument that there could even be alter ego liability, the statute of limitations is not tolled by the Gold case as to Defendant BIG.

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[2] Defendant requests, as set forth in the Request For Judicial Notice ("RJN") filed herewith, that the Court take judicial notice of the Gold Second Amended Complaint (Exhibit A thereto) and Judge Miller's January 24, 1997 ruling in Goodman, (Exhibit B thereto), pursuant to Federal Rule of Evidence 201.

Judge Miller ruled in Goodman, supra, that the pendency of the underlying class action in Gold did not toll the statute of limitations as to the defendant brokerage houses. Judge Miller properly ruled that Plaintiffs could "not rely on class tolling until the proposed class action is deemed substantively viable and the class is certified or decertified." RJN, Ex. B. Class certification is necessary to trigger class tolling.

> Judicial recognition of a proposed class, whether it is ultimately certified or decertified, is needed to trigger class tolling. Without an initial rule with respect to class certification, the class action proposal would be illusory.

Stutz v. The Minnesota Mining & Manufacturing Co., 947 F. Supp. 399, 403 (S.D. Ind. 1996).

Plaintiffs' Complaint here was filed prior to a class certification in Gold, which may never occur. Thus, Plaintiffs' reliance on Gold to toll the statute of limitations is misplaced. Therefore, the statute of limitations has expired as to Defendant BIG and respectively to Defendant Biedenharn.

Finally, Plaintiffs claim that this action is timely under a four year statute of limitations as to the pendent state causes of action for breach of fiduciary duty, breach of contract, and breach of trust. Judge Miller also rejected this argument. Judge Miller, acknowledging the requirements set forth in Griffin v. United Transportation Union, 190 Cal.App.3d 1359, 1362 (1987), determined the applicable statute of limitations by focusing on the substance of the complaint or the gravamen of the action rather than the form of the pleadings. Judge Miller stated "Plaintiffs claims sound in

fraud and not mere breach of fiduciary duty" and thus are time barred by the applicable one year statue of limitations. RJN Ex. B (emphasis in original).

Plaintiffs have merely filed a complaint in federal court alleging the same arguments they previously lost in state court. Plaintiffs fail to allege any additional facts than set forth before Judge Miller in Goodman, supra. Therefore, Plaintiffs are still barred by the statute of limitations.

3. PLAINTIFFS' FEDERAL ALLEGATIONS FAIL FOR IMPROPER VENUE

A. Plaintiffs Base Jurisdiction And Venue On 15 U.S.C. Section 77v And 15 U.S.C. Section 78aa.

Plaintiffs assert that there is federal subject matter jurisdiction:

> over the federal claims herein under section 22(a) of the Securities Act, 15 U.S.C. section 77v(a); section 27 of the Exchange Act, 15 U.S.C. section 78aa. The Court has supplemental jurisdiction over the state law claims herein under 28 U.S.C. section 1367.

SAC, p. 2, ¶ 2.

Both section 22(a) of the Securities Act of 1933 (the "1933 Act"), 15 U.S.C. § 77v and section 27 of the Securities Exchange Act of 1934 (the "1934 Act"), 15 U.S.C. § 78aa, provide for service of original process outside the forum state. The terms of 15 U.S.C. section 77v are, in pertinent part, as follows:

> (a) The district courts of the United States...shall have jurisdiction...of offenses and violations under this subchapter...of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter. Any such suit or action may be brought in the district wherein the

> defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found... .

Likewise, 15 U.S.C. section 78aa, in pertinent part, provides as follows:

> The district courts of the United States...shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder. ...Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found... .

Under these sections, venue in a civil action predicated upon an alleged violation of the 1933 Act or the 1934 Act, or both, would properly lie in a district (1) as to the 1933 Act, in which the offer or sale of the security took place or, as to the 1934 Act, in which any act or transaction constituting the violation took place, (2) in which the defendant is found, (3) in which the defendant is an inhabitant, or (4) in which the defendant transacts business. Chambliss v. Coca-Cola Bottling Corp., 274 F. Supp. 401, 405 (E.D. Tenn. 1967) (criticized on other grounds). Therefore, the only difference for venue between the 1933 Act and the 1934 Act is that the 1934 Act

provides greater venue choices than the 1933 Act by including the phrase "in which any act or transaction constituting the violation took place." Conover v. Dean Witter Reynolds, Inc., 794 F.2d 520, 527 (9th Cir. 1986). Even with the broader venue provision of the 1934 Act, venue is still not proper in the Southern District of California as to this moving Defendant.

Applying the venue provisions of the 1933 Act and the 1934 Act to Biedenharn clearly reveals that venue in the Southern District of California is not proper: (1) As to the 1933 Act, Biedenharn did not offer or sell the subject securities in California; as to the 1934 Act, the alleged act or transaction constituting the violation did not take place in California; (2) Biedenharn was not found in California, (3) he does not inhabit California, nor (4) did he transact the subject business in California.

As shown in the Biedenharn Declaration, Biedenharn resides in Louisiana and he was not registered at any time to do business within the State of California, including at the time of the alleged transaction with Ralph Brockman. In fact, the only Plaintiffs suing this Defendant, Ralph Brockman and Danny Litton, also live in Louisiana. The alleged transaction was a sale of Notes in Louisiana from Louisiana Defendants to Louisiana Plaintiffs. The SAC in this action is based on a cause of action for alleged illegal securities transactions arising out of alleged acts or events that took place, if at all, wholly in the State of Louisiana, and had nothing to do with California.

Biedenharn's Declaration states sufficient facts to reveal venue is improper and the SAC lacks any facts asserting the Southern District of California is the proper venue. The SAC merely alleges a sale of securities of $100,000 to Ralph Brockman by Biedenharn, and $650,000 to Danny Litton by William Powdrill. The SAC fails to allege that the offer or sale of the security took place in California; that the act or transaction constituting the violation took place in California; that the Defendant was found in California, inhabits California or transacts business in California. Plaintiffs' failure to allege the essential facts necessary to evaluate venue is fatal to Plaintiffs' cause of action since Plaintiffs bear the burden of proof of establishing proper venue. United Industrial Corp. v. Nuclear Corp. of America, 237 F. Supp. 971, 979 (D.Del.1964).

In Olympic Capital Corp. v. Newman, 276 F. Supp. 646 (C.D. Cal. 1967), plaintiff alleged that defendant sold a promissory note through a combination of negotiations and acts in several states, not including California. Plaintiff, however, brought the action in the Central District of California. The court held that venue was clearly improper since:

> The only act of defendants material to the consideration of violations of the Securities Acts alleged herein occurred in Colorado, Kansas, Oklahoma, or Texas, and not in California.

276 F. Supp. at 654.

In the case at bar, the only alleged relevant act of Defendant occurred in Louisiana and not in California.

Similarly, in Lorenz v. Watson, 258 F. Supp. 724 (E.D. Pa. 1966), the court ruled venue in Pennsylvania was improper in an action against the New York Stock Exchange. In that case, the plaintiff alleged that the Exchange committed an act and engaged in a transaction within the Eastern District of Pennsylvania in failing to investigate and supervise the activities of its brokers operating in Pennsylvania. The court stated:

> Section 27 of the Act is a special venue provision and venue is to be established only in compliance with its terms. In the view this Court takes, any omission on the part of the Exchange took place in New York where it conducts its affairs. There is nothing in the way of legislative history which suggests that Congress intended so broad an interpretation of this provision, nor is such an interpretation necessary to attain the basic objective of adequately protecting the investing public.

Id. at 729.

As in Lorenz, Plaintiffs here fail to allege facts to support venue in California against this Defendant in compliance with the terms of the 1933 Act or the 1934 Act.

The court in Olympic Capital, supra, stated:

> Courts, facing the problem of the scope of a sale transaction have uniformly held that when a seller in State S delivers a security to a buyer in State B, who sends or delivers a check to the seller in State S, the sale takes place in State B. [Citation.]

276 F. Supp at 653.

Applying the above example in Olympic Capital to this case, State B and State S are both Louisiana. Thus, Plaintiffs cannot assert that an offer or sale took place in California, nor can Plaintiffs argue that any act or transaction

constituting the violation occurred in California. Thus, to assert venue under the 1933 Act or the 1934 Act, Plaintiffs must prove Defendant was found, inhabits, or transacted business in California. However, Plaintiffs do not allege in their SAC that Defendant was found within the Southern District of California, or that he transacted business here at the time of the alleged incident, or, finally, that Defendant is an inhabitant of California. Furthermore, the Biedenharn Declaration shows otherwise.

Plaintiffs fail to allege any facts supporting their assertion that venue in the Southern District of California is proper. Moreover, Plaintiffs cannot allege any facts supporting a California venue since they do not exist. The alleged offer and sale took place, if at all, in Louisiana between residents of Louisiana. Thus, there is no basis for venue in the Southern District of California.

B. Plaintiffs' State Causes of Action Fail For Lack Of Personal Jurisdiction and Improper Venue.

Plaintiffs claim the Court has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. section 1367.[3] While this statue may, but does not necessarily, provide subject matter jurisdiction for the state law claims, it does not grant personal jurisdiction or venue.[4] Thus, Plaintiffs must prove that the Court has personal

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[3] Plaintiffs can only claim jurisdiction for the state law claims under section 1367 since there is no diversity between the Louisiana Plaintiffs and the Louisiana Defendants.

[4] The legislative history explicitly states that section 1367 in intended to give courts power to adjudicate certain matters lacking independent subject matter jurisdiction. While explicitly providing for subject matter jurisdiction, the legislative history never refers to personal jurisdiction nor venue.

jurisdiction over Defendant and that California is the proper venue for the state claims to be heard.

4. THE COURT LACKS PERSONAL JURISDICTION OVER DEFENDANT BIEDENHARN

A. Plaintiffs Cannot Prove Defendant Has The Necessary "Minimums Contacts" With California Sufficient To Subject Defendant To Jurisdiction In California.

Rule 12(b)(2), Fed.R.Civ.P., provides:

> Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: ...(2) lack of jurisdiction over the person. ...A motion making any of these defenses shall be made before pleading if a further pleading is permitted... .

In this matter, nonresident Plaintiffs are attempting to require a nonresident Defendant to be haled into a court in a foreign jurisdiction. Under well-settled constitutional law, a *nonresident defendant cannot be sued in a foreign jurisdiction* unless he has done some act or engaged in some transaction by which he has purposefully availed himself "of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its law." Wolfe v. City of Alexandria, 217 Cal. App. 3d 541, 545, 265 Cal. Rptr. 881 (1990).

Plaintiff has the burden of proof to show by a preponderance of the evidence that the nonresident defendant has these "minimum contacts":

> When a nonresident defendant challenges personal jurisdiction the burden shifts to the plaintiff to demonstrate by a preponderance of the evidence that all

> necessary jurisdictional criteria are met. [Citation omitted.] This burden must be met by competent evidence in affidavits and authenticated documentary evidence.

Ziller Electronics Lab GmbH v. Superior Court, 206 Cal. App. 3d 1222, 1232-33, 254 Cal. Rptr. 410 (1988).

> [W]hen the plaintiff seeks to predicate jurisdiction on causing tortious effects in the forum state and when the record tends unequivocally to establish that the defendant's conduct did not cause such effects, the plaintiff "cannot demand that we judge the question of jurisdiction in the light of a claim he apparently does not have."

J. M. Sahlein Music Co. V. Nippon Gakki Co., 197 Cal. App. 3d 539, 545, 243 Cal. Rptr. 4 (1987).

The Plaintiffs cannot demonstrate by a preponderance of the evidence that this moving Defendant has the necessary minimum contacts with California to require this Defendant to submit to jurisdiction in California.

B. Due Process Requires Certain Minimum Contacts By A Defendant With the Forum State.

The amenability to suit of a nonresident in a particular forum is governed by the limitations of the due process clause of the United States Constitution. The standards for determining the constitutional exercise of personal jurisdiction over nonresident corporations were established in the case of International Shoe Co. v. State of Washington, 326 U.S. 310 (1945). The Supreme Court in International Shoe Co., supra, held due process requires that sufficient "minimum contacts" must exist in the forum state in order to enable the courts of that state to constitutionally exercise jurisdiction over nonresident defendants.

California Code of Civil Procedure ("CCP") section 410.10, the California "long arm" statute, provides:

> A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

Jurisdiction over the parties is necessary for the validity of any judgment *in personam*. CCP § 1917.

Only when Plaintiffs have met their burden of proof of establishing minimum contacts may a court then decide to exercise personal jurisdiction over the defendant. Here, however, the undisputed facts make it clear that no such jurisdiction exists with respect to Biedenharn.

In a series of landmark cases beginning with International Shoe, supra, the United States Supreme Court defined the parameters of the state's power to compel nonresidents to defend suits brought against them in the state's courts. See World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980); Hanson v. Denckla, 357 U.S. 235 (1958); McGee v. International Life Ins. Co., 355 U.S. 220 (1957). The general rule is that the forum state may not exercise jurisdiction over a nonresident unless his relationship to the state is such as to make the exercise of such jurisdiction reasonable. International Shoe, supra, 326 U.S. at 320.

It is clear that fairness and reasonableness are the general criteria by which the constitutional limits of a court's jurisdiction are measured. In Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 80 Cal. Rptr. 113 (1965), the court stated:

> A defendant not literally "present" in the forum state may not be required to defend itself in that state's tribunals unless the "quality and nature of the defendant's activity" in relation to the particular cause of action makes it fair to do so.

71 Cal. 2d at 898.

Biedenharn does not reside in California, nor has he transacted any business in California with respect to the matters alleged in the SAC. Therefore, Biedenharn does not have a relationship with California which would make the exercise of jurisdiction reasonable. Dragging this moving Defendant, a Louisiana resident, into a federal court in California, in an action involving transactions between Louisiana residents taking place solely in Louisiana, would be unfair, unreasonable and would violate this Defendant's due process rights.

C. Since Plaintiffs And Defendant Did Not Purposefully Derive Benefit From Any Activities Relating To California, Personal Jurisdiction Over Them Is Lacking.

It is undisputed that the Plaintiffs and Defendant never transacted business in California, never resided in California, nor had any financial interest in California corporations. [See attached Declaration of Biedenharn.] This is not the sort of case where a claimed "effect" on a plaintiff in California could be a sufficient predicate for the exercise of jurisdiction because there is no effect in California. See, Kulko v. California Superior Court, 436 U.S. 84, 96, 98 S. Ct. 1690, 56 L.Ed. 2d 132 (1978) ("In light of our conclusion that appellant did not purposefully derive benefit from any activities relating to the State of California, it is apparent

that the California Supreme Court's reliance on appellant's having caused an 'effect' in California was misplaced."), Rev'g Kulko v. California Superior Court, 19 Cal. 3d 514. 138 Cal. Rptr. 586, 564 P.2d 353 (1977).

The U.S. Supreme Court reiterated its requirement of purposeful availment to the forum state in World Wide Volkswagen Corp., supra. The Supreme Court rejected an Oklahoma court's exercise of jurisdiction over a New York car dealer for an injury from an accident in Oklahoma. The only basis for jurisdiction was the sale of the allegedly defective car in New York by the defendant, who knew only that any vehicle sold might be driven elsewhere. The Court decided that the defendant did not purposefully avail himself of the privileges or protections of Oklahoma, thus personal jurisdiction was lacking.

More recently, the Supreme Court found that merely putting a product into the stream of commerce, even with knowledge that it would eventually end up in a particular state, is an insufficient basis for *in personam* jurisdiction over the manufacturer. Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102 (1987).

Similarly, in Sibley v. Superior Court, 16 Cal. 3d 442. 128 Cal. Rptr. 34, 546 P.2d 322 (1976), a nonresident defendant executed a guaranty of a partnership obligation to make payments to a California plaintiff. Id. at 444. Evidence was presented that the guaranty "induced [the plaintiff], a California corporation, to enter into MTA, a new California limited partnership, and that [the plaintiff] would not have

performed the MTA agreement without [the defendant]'s guarantee." Id. at 447.

The present case is far clearer than Sibley, where there was at least a signed guaranty. Here, the moving Defendant did not sign anything that would have an "effect" in California. This moving Defendant did not purposefully avail himself of the privilege of conducting business in California, did not anticipate nor derive an economic benefit in California, nor did he assume any obligations which he might have sought to enforce against the Plaintiffs in a California court.

However, even if Defendant's actions had an effect in California, and they did not, jurisdiction must also be reasonable. The Sibley court, referencing the reasonableness requirement in the Judicial Council comment, stated:

> The mere causing of an "effect" in California, however, as acknowledged in the Judicial Council comment quoted above, is not necessarily sufficient to afford a constitutional basis for jurisdiction; notwithstanding this "effect," the imposition of jurisdiction may be "unreasonable." As was held in International Shoe Co. v. Washington, supra, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95, a suit may not be maintained where jurisdiction offends "traditional notions of fair play and substantial justice."

Id. at pp. 316-317, 66 S.Ct. at p. 158, 90 L.Ed. at p. 102; (citations omitted).

Plaintiffs cannot meet their burden of proof of showing, by the preponderance of reasonable, credible evidence, that Defendant purposefully derived benefit from activities aimed at California sufficient to subject him to personal jurisdiction

here. When neither the plaintiffs nor the defendant have California connections, no personal jurisdiction may attach.

5. CONCLUSION

Defendant Biedenharn's Motion to Dismiss the federal claims based on the 1933 Act and the 1934 Act and the state claims must be granted for lack of venue and personal jurisdiction, and because they are all barred by the applicable statutes of limitations.

DATED: April 18, 1997

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